

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
GAME SHOW NETWORK, LLC,)	MB Docket No. 12-122
Complainant,)	File No. CSR-8529-P
)	
v.)	
)	
CABLEVISION SYSTEMS CORP.,)	
Defendant)	

TO: Chief Administrative Law Judge Richard L. Sippel

**DEFENDANT’S MOTION *IN LIMINE* TO EXCLUDE PORTIONS OF THE
TESTIMONY OF DAVID GOLDHILL, JOHN ZACCARIO, DALE HOPKINS
AND KELLY GOODE**

Defendant Cablevision Systems Corporation (“Cablevision”) hereby moves *in limine* to preclude portions of the testimony of David Goldhill, John Zaccario, Dale Hopkins, and Kelly Goode that are inadmissible under the Federal Rules of Evidence.¹ Among other things, Cablevision objects to testimony that (1) offers opinions by GSN’s fact witnesses on subjects, such as third-party business strategies, as to which they have no personal knowledge, and which, therefore, are plainly inadmissible under Fed. R. Evid. 602; (2) relates to third-party conversations that are hearsay barred by Fed. R. Evid. 802; and (3) describes facts or events that are not probative of any issue in this proceeding and are, therefore, inadmissible under Fed. R. Evid. 402.

¹ See 47 C.F.R. § 1.351 (2009) (“Except as otherwise provided in this subpart, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern formal hearings”). Although the Presiding Judge may “relax” those rules to serve the ends of justice (see *id.*), there is no authority or reason for eliminating all evidentiary protections.

GSN's fact witnesses can properly testify to the facts concerning the background and strategies of GSN during the relevant time periods and any dealings with Cablevision that are within their personal knowledge. GSN cannot turn their witnesses' written direct testimony into a platform for inadmissible argument; irrelevant commentary; and alleged conversations that cannot be cross examined.

Parts of the direct testimony of Mr. Goldhill, Mr. Zaccario, Ms. Hopkins, and Ms. Goode suffer from one or more of these infirmities. We set forth below the legal framework for the exclusion of these portions of GSN's written direct testimony. For the convenience of the Presiding Judge, we attach each to this motion as Exhibits "A" through "D" color-coded, annotated versions of the written direct testimony that show precisely which portions are inadmissible and why.

I. GSN's Testimony Is Precluded Under Fed. R. Evid. 602 To The Extent That It Is Not Based Upon Personal Knowledge

Fed. R. Evid. 602 prohibits a witness from testifying about a subject "unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."² Although personal knowledge may include reasonable inferences, "those inferences must be grounded in observation or other first-hand personal experience. They must not be flights of fancy, speculations, hunches, intuitions, or rumors about matters remote from that experience."³

GSN's written direct testimony, in the indicated parts, ignores this fundamental rule of evidence. For example:

² FED. R. EVID. 602.

³ *Payne v. Pauley*, 337 F.3d 767, 772 (7th Cir. 2003) (internal quotations and citations omitted); *see also Olivas v. ITT Hartford Life & Annuity Ins. Co.*, 57 F.3d 1077, No. 94-cv-553335, 1995 WL 349855, at * 2 (9th Cir. June 9, 1995) (upholding exclusion of evidence based on witness's speculation rather than personal knowledge); *Schertz v. Waupaca County*, 875 F.2d 578, 582 (7th Cir. 1989) (same).

- **Mr. Goldhill** is CEO of GSN, he has never worked at Cablevision or Rainbow Media and yet he purports to testify on: (i) WE tv's internal business strategies, actual and target audience, and programming objectives; (ii) the performance of WE tv and Wedding Central as networks; (iii) Cablevision's decision-making process with respect to the carriage and re-tiering of GSN; (iv) the thoughts and reasoning of Cablevision executives with respect to their negotiations with GSN, Sony and DIRECTV; and (v) the opinions of DIRECTV executive Derek Chang.

- **Ms. Goode** was Senior Vice President of Programming for GSN from 2008 to 2011 and she has never worked for WE tv, but her direct testimony comments upon: (i) WE tv's business strategies, actual and target audience, and programming objectives; and (ii) pitches and negotiations that occurred after she left her position as head of programming.

- **Ms. Hopkins** was chief marketing officer of GSN from 2009 to 2011, she has never worked for Cablevision, and only became a distribution executive in 2011, yet she testifies about: (i) WE tv's perceptions of GSN; (ii) Cablevision's launch of GSN in 1997 and subsequent negotiations between the parties, which took place long before her tenure as Senior Vice President of distribution; (iii) Cablevision executives' thought processes with respect to re-tiering GSN and subsequent negotiations with DIRECTV and Sony; and (v) "every major distributor's" perception of GSN.

- **Mr. Zaccario** is senior vice president of Advertising Sales at GSN and lacks the personal knowledge to testify about: (i) the programming objectives, target audiences, and performance of every network in GSN's competitive set; (ii) the business objectives, negotiating tactics, and rationales of advertising executives; or (iii) advertising executives' ability to access and evaluate GSN's programming initiatives.

II. All Inadmissible Hearsay Statements Must Be Stricken From GSN's Testimony

Fed. R. Evid. 801(d) provides that: "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."⁴ Hearsay statements are deemed inadmissible under Fed. R. Evid. 802 unless falling within an enumerated exception. The testimony of GSN's fact witnesses contains hearsay statements offered for the truth of the matter

⁴ FED. R. EVID. 801(d).

asserted. None of these statements falls within any recognized hearsay exception and thus must be excluded under Rules 801 and 802.

- **Mr. Goldhill** testifies about matters relayed to him by Mr. Gillespie and Mr. Chang in conversations and meetings that Mr. Goldhill did not attend. Although statements by Cablevision to Mr. Gillespie or Mr. Chang arguably constitute party admissions, such statements may not be introduced into evidence through Mr. Goldhill because the recitation of a Cablevision statement by Mr. Gillespie or Mr. Chang to Mr. Goldhill is hearsay not falling within an exception.⁵

- **Mr. Zaccario** testifies about hearsay statements made by advertisers and by his team. Mr. Zaccario's testimony about statements by other members of GSN's advertising team, who are non-testifying individuals, is inadmissible hearsay. Mr. Zaccario similarly may not testify as to statements made by non-testifying third-party advertisers. Moreover, any statements made by advertisers that were reported back to him by his team members constitute double- or multiple hearsay not falling within an exception.

III. Portions Of GSN's Testimony Should Be Precluded Under Fed. R. Evid. 402 To The Extent That It Is Not Relevant.

Relevant evidence is defined as evidence having "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."⁶ The issue to be determined at the upcoming hearing is whether or not Cablevision's decision to put GSN on its Sports & Entertainment Pak in December 2010 constituted discrimination on the basis of affiliation. Despite this, GSN's testimony contains evidence relating to GSN's programming or audience well after the date when GSN's re-tiering took effect. For

⁵ See, e.g., *Gilligan v. Moreau*, 234 F.3d 1261, No. 00-7109, 2000 WL 1608907, at *3 n.4 (2d Cir. Oct. 25, 2000) ("The testimony of witnesses as to what the witness heard a party say is admissible as a party admission. The testimony of witnesses as to what someone else told them a party said is inadmissible double hearsay."); *Keenan v. Allan*, 889 F. Supp. 1320, 1339 n.5 (E.D. Wash. 1995) (evaluating double hearsay statement and noting that while the initial statement from an opposing party to a clerk may be considered a party-admission, the reiteration of that statement from the clerk to another party is hearsay not falling within an exception and thus not admissible).

⁶ FED. R. EVID. 401.

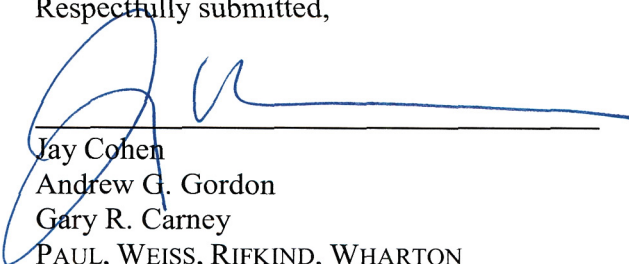
REDACTED – FOR PUBLIC INSPECTION

example, Mr. Goldhill, Ms. Goode, and Mr. Zaccario all testify about original programming that premiered after Cablevision's re-tiering. Such testimony cannot be relevant in this case because it is simply not probative of the issue of whether Cablevision decision to retier was improper discrimination.

CONCLUSION

For the foregoing reasons, Cablevision respectfully requests that the testimony of David Goldhill, John Zaccario, Dale Hopkins and Kelly Goode be excluded and stricken from the record to the extent identified in Exhibits "A" through "D."

Respectfully submitted,



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March 15, 2013

Exhibit A

Legend to Testimony of David Goldhill (GSN Exh. 218)

COLOR	Fed. R. Evid.
	402 (Relevance)
	602 (No Personal Knowledge/Foundation)
	802 (Hearsay)

DIRECT TESTIMONY OF DAVID GOLDHILL

GSN Exh. 218

I, David Goldhill, hereby declare:

A. Background

1. I have served as the President and Chief Executive Officer of Game Show Network, LLC (“GSN”) since 2007. In this role, I oversee GSN’s distribution, guide the network’s programming strategy, and lead development of the audience and advertiser base for the network.

2. I have more than 20 years of experience in the media industry. Prior to joining GSN, I served as president and chief operating officer of Universal Television Group, where I oversaw program and asset development and distribution activities for the company’s domestic and international cable networks (including USA Network and SciFi), cable and network television studios, first-run syndication business, and worldwide television distribution. I previously was executive vice president and chief financial officer of Act III Communications, a privately-owned holding company with interests in television stations, movie theaters, magazines, and film/television production, and was chief executive officer and then chairman of the board of Independent Television Network Holdings, Ltd., which built the TV3 television network in Russia.

3. In addition to my experience running media businesses, I also have substantial experience in the finance industry. I worked as a senior advisor to Associated Partners, an investment firm specializing in media, telecommunications and technology. Previously, I was an investment banker at Morgan Stanley and Lehman Brothers.

B. The Networks

4. GSN launched on December 1, 1994 as “Game Show Network.” For years, the network has enjoyed broad distribution from multichannel video programming distributors (“MVPDs”) throughout the country, including — until the events in question — on Cablevision. Sony Pictures Entertainment, Inc. (“Sony”) and DIRECTV have indirect ownership interests in GSN. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. I joined GSN in 2007 as its Chief Executive Officer. In 2004, GSN began referring to its service as “GSN” rather than “Game Show Network” in order to present itself as a general interest network that appeals to women. To continue that effort, and recognizing that GSN’s audience was already heavily female, when I became CEO in 2007, I adopted a programming strategy that would more directly cater to the network’s female audience.

6. To that end, I hired programming and marketing executives with experience at other female-oriented networks like Lifetime and E! Entertainment Television. Together, we developed an original programming slate that was designed to capture viewers in the women 18-49 and 25-54 demographics. We updated our marketing efforts to promote our female-oriented shows and focused heavily on the female demographics in our advertising sales efforts.

7. In part as a result of these efforts, by 2009 and continuing through today, GSN is a general interest network that features (largely through reality competition and game show formats) extensive female-oriented original programming that, at the time of the events at issue in this case, accounted for more than [REDACTED] of its primetime schedule. Among other things, GSN offers reality and game programming that is relationship- and female-oriented. For

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example, GSN's schedules before the repositioning included shows such as *Love Triangle*, a dating show hosted by Wendy Williams, which features couples caught in real-life "love triangles"; *The Newlywed Game*, a modern version of the classic comedic game, hosted by Sherri Shepherd, in which newly married couples face off in a series of question rounds; and *Baggage*, a dating show hosted by Jerry Springer, which turns the traditional dating show on its head in a highly comedic way by having a participant evaluate three potential suitors who display suitcases containing declarations of their past personal "baggage," in a manner particularly appealing to women.

8. More recently, in addition to new seasons of *The Newlywed Game* and *Baggage*, GSN has aired a cooking competition show, *Beat the Chefs*, acquired and aired episodes of *Dancing With the Stars*, and premiered a highly successful competition-based program, *American Bible Challenge*. All of these shows appeal primarily to female viewers. We

also have offered non-game reality shows targeted to women, such as *Carnie Wilson: Unstapled*, which followed the singer Carnie Wilson in her effort to launch a dessert business. We recently

developed and will soon air a show called [REDACTED]. Prior to the events at issue in this case, Nielsen reported that GSN was distributed to approximately [REDACTED] subscribers. Women account for approximately [REDACTED] of GSN's viewership.¹

¹ GSN's "gender skew" has fluctuated at various points, as is the case for all networks of GSN's size. But consistently since I joined the network, GSN has targeted and delivered a high number of female viewers, comparable to other female-oriented networks.

9. WE tv is a television network that, like GSN, shows programming that is popular with women. WE tv was, at all relevant times, owned by Rainbow Media, which was wholly owned by Cablevision.²

10. I understand that, in recent years, WE tv's schedule focused on content that is thematically similar to GSN's relationship and female-oriented programming. This is because GSN and WE tv each target women age 25 to 54, and each offers significant content designed to appeal to this demographic and to advertisers seeking to reach this demographic with their sales messages. Not surprisingly, there is significant overlap in the audiences of the two networks. And, given the overlap in our core and target audiences, we have even competed directly against WE tv for the same programming and the same talent.

11. From 2009 to 2011, Cablevision also owned, through Rainbow Media, a network spun off from WE tv known as Wedding Central. Although we never considered Wedding Central to be a meaningful competitor because it struggled to obtain carriage in the marketplace, we believed that if the network managed to succeed, it would appeal to young female viewers, similar to those who watch GSN and WE tv.

C. Cablevision's Repositioning of GSN to the Sports Tier

12. When I joined GSN in 2007, I learned that GSN [REDACTED]. I discussed this with Dennis Gillespie, GSN's Senior Vice President of Distribution, on a number of occasions, and directed Mr. Gillespie to continue his efforts to engage in meaningful negotiations with Cablevision. Mr. Gillespie reported that

Cablevision opposed a new agreement on terms consistent with the previous agreement but made

² In 2011, Rainbow Media was spun off by Cablevision into a separate corporate entity, AMC Networks, Inc. I understand that AMC Networks continues to be affiliated with Cablevision because both are commonly-owned by the Dolan family.

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clear that it would continue to carry GSN on the same terms set forth [REDACTED]

[REDACTED].

13. Cablevision's position was quite surprising to me. We work hard to maintain positive relationships with our affiliate partners, so I was struck by Cablevision's complete unwillingness to engage in any meaningful dialogue on a new carriage agreement. We had no choice but to heed Cablevision's warning and to consent to continued carriage without a formal written agreement.

14. Cablevision's Senior Vice President for Programming Acquisition Tom Montemagno abruptly notified us on December 3, 2010 that Cablevision intended to reposition GSN to its narrowly-distributed, premium sports tier effective February 1, 2011. This would require our viewers in Cablevision systems to pay an additional \$6.95 per month to continue to watch GSN and would make it much harder for the network to reach our female audience given the male orientation of the sports tier. Mr. Montemagno told us that the move was driven by concerns about GSN's cost and performance. Cablevision did not announce plans to reposition any of its affiliated networks — including its networks similarly situated to GSN, Wedding Central and WE tv — to the premium sports tier.

15. I was most struck by the abruptness of the decision and by the nonsensical nature of the plan to carry GSN — a female-oriented network with zero sports programming — on a specialty sports tier populated exclusively with male-targeted networks. I immediately began to discuss with the GSN team what we could do to avoid such negative repositioning on Cablevision systems. (*See* GSN Exh. 99).

16. I asked our management committee member Derek Chang (at the time, DIRECTV's Executive Vice President of Content Strategy and Development), who had a prior

business relationship with Cablevision Chief Operating Officer Tom Rutledge, to contact Mr. Rutledge to see whether it would be possible to persuade Cablevision to reconsider.

17. Mr. Chang had not previously participated in affiliate negotiations on behalf of GSN. He told me he would be willing to contact Mr. Rutledge in this instance because of the importance to GSN of Cablevision's distribution and because, based on his experience in the media industry, he considered it unusual that Cablevision would communicate a final decision to retier GSN without allowing the opportunity for any negotiation.³

18. In response to my request, Mr. Chang informed me that he had a brief initial call with Mr. Rutledge in early December and a follow-up conversation on December 13, 2010, in which Mr. Rutledge asked him to speak with Josh Sapan, President of Cablevision's programming subsidiary, Rainbow Media Holdings. (GSN Exh. 99). Mr. Chang later reported to me that Mr. Sapan indicated that Cablevision would be willing to consider carrying GSN on a basic tier if DIRECTV would launch Wedding Central on DIRECTV. (See GSN Exh. 102). Mr. Chang explained that, based on a handful of conversations he had with Mr. Sapan and his colleague Robert Broussard, Rainbow's head of Distribution, it was clear that a Wedding Central launch was the only item that might cause Cablevision to reverse its decision to retier GSN.

19. Mr. Chang told me that he turned down Rainbow's proposal on January 31, 2011 because DIRECTV had previously decided that Wedding Central did not merit distribution on its service. The next day, Cablevision moved GSN to its sports tier. I understand that, even after this point, Mr. Sapan and Mr. Broussard continued to lobby DIRECTV to launch Wedding

³ To support his outreach to Mr. Rutledge, Mr. Gillespie and I provided Mr. Chang with background information about GSN's distribution and negotiation history with Cablevision. (See GSN Exh. 93).

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&
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Central and that Cablevision continued to link GSN's carriage to a DIRECTV commitment to launch.

20. We continued to press for meaningful negotiations with Cablevision following Cablevision's placement of GSN on the sports tier to see if there was anything other than DIRECTV's carriage of Wedding Central that would placate Cablevision. After the repositioning occurred, I had several contacts with Cablevision to see if GSN could achieve restoration of its prior service level. On February 7, 2011, I participated in a meeting in Bethpage, New York with Cablevision CEO James Dolan, Chief Operating Officer Tom Rutledge, and Mr. Montemagno. Robert Wiesenthal, Executive Vice President and Chief Financial Officer of Sony Corporation of America, and Andy Kaplan, President, International Networks of Sony Pictures Television International and a member of GSN's management committee, also participated in this meeting.

21. During this meeting, Mr. Dolan cited GSN's cost and ratings performance as the motivating factors for Cablevision's decision to reposition GSN to the sports tier.

Cablevision did not move any other network — including, importantly, any network it owns — to the sports tier or otherwise downgrade a network to a lesser tier, even though WE tv and many other networks are reportedly [REDACTED]. Further,

[REDACTED]
[REDACTED]
[REDACTED].

22. Cablevision's treatment of GSN also did not square with our dealings with other distributors. Every other major distributor recognizes GSN's value — that is, the high ratings it delivers at a relatively low cost compared with other networks — and has continued to

carry the network broadly. Even in the New York market, Cablevision's relegation of GSN exclusively to the sports tier while giving broad carriage to its own networks, WE tv and Wedding Central, is inconsistent with the carriage of GSN and Cablevision's affiliates by all other distributors. For example, [REDACTED]

[REDACTED]. Wedding Central, on the other hand, was hardly carried by anyone, in New York or otherwise, when it was on the air — that is, anyone except Cablevision, which carried Wedding Central on a broadly-distributed tier. In short, Cablevision is the clear outlier when compared with the rest of our affiliate partners, both nationally and locally in New York.⁴

23. During our meeting at Bethpage, Mr. Dolan also stated that Cablevision would not accept any carriage proposal that required Cablevision to pay anything at all for GSN. I explained that this proposal could only be seen as a disingenuous “non-offer” because it was, as the Cablevision executives should plainly know, impossible for GSN to accept. This was in-part because [REDACTED]

⁴ I understand that Cablevision has argued, as a justification for its tiering decision, that GSN does not perform as strongly in New York. GSN's broad carriage on other MVPDs in the New York market suggests otherwise. More broadly, GSN's performance in a given market is directly linked to the support it receives from its affiliate partners in such markets. Where GSN is provided with marketing support and favorable channel placement by an operator, it performs better locally, as is the case in markets like St. Louis where GSN receives favorable channel positioning and [REDACTED].

On the other hand, the negligible support and poor channel placement GSN receives from Cablevision in the New York market undoubtedly has an impact on GSN's performance in that market. That GSN nonetheless performed [REDACTED] with WE in New York prior to the repositioning is simply a testament to the quality of our content. *See, e.g.,* GSN Exhs. 96 & 97 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24. Following that meeting, I spoke directly with Mr. Montemagno and alerted him that GSN would submit a new proposal to regain digital basic distribution on all Cablevision Systems. During a phone call on February 8, 2011, I presented Mr. Montemagno with a proposal for distribution of GSN on Cablevision's digital basic package. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. Mr. Montemagno responded to the proposal by repeating Cablevision's position that it would not accept any carriage proposal that required Cablevision to pay anything at all for GSN. This position remained a non-starter in part, as Mr. Montemagno would have understood, [REDACTED]. Cablevision thereafter formally rejected the proposal we made during a March 8, 2011 telephone conversation with GSN's Executive Vice President of Distribution, Dale Hopkins.

26. During these negotiations, it became clear to me that Cablevision would not reconsider its tiering decision absent a commitment from DIRECTV to launch Wedding Central.

[REDACTED]

[REDACTED] Cablevision's refusal of that offer, coupled with its insistence on a [REDACTED] deal that it knew we could never accept given the realities of our business, clearly

suggested to me that Cablevision had no interest in a solution that did not include a trade of carriage involving Wedding Central.

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27. Indeed, Cablevision's desire to advantage its affiliated networks, including to obtain a carriage commitment for Wedding Central from DIRECTV, is the only explanation for its tiering decision that is consistent with its conduct towards GSN. Putting that motive aside,

Cablevision's tiering decision strikes me contrary to GSN's broad carriage by other distributors that uniformly recognize the network's value, Cablevision's continued broad carriage of its [REDACTED] affiliated networks, and Cablevision's unwillingness to engage in any meaningful negotiations with GSN to reach a mutually-workable carriage solution.

D. Harmful Effects of the Repositioning

28. Despite GSN's continued efforts to engage Cablevision in discussions, since February 1, 2011, Cablevision has distributed GSN to New York-New Jersey-Connecticut subscribers exclusively on a sports tier that today reaches only about [REDACTED] of Cablevision's [REDACTED] New York-New Jersey-Connecticut subscribers. It is my understanding that subscribers must pay a fee of \$6.95 per month above the amount they already pay for basic digital cable service to receive this tier of service. [REDACTED]

29. Moreover, GSN's placement on the sports tier is particularly inappropriate given GSN's predominantly female viewership. Not surprisingly, aside from GSN, *every other network* on the tier offers sports programming and/or programming specifically directed at a male audience. (See GSN Exh. 179). Being on the sports tier with such networks significantly impacts our ability to reach of our core female viewership.

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30. Cablevision's relegation of GSN to the sports tier has harmed GSN's ability to compete against other similarly situated cable networks, including both WE tv and, while it was

operating, Wedding Central. The tiering reduced GSN's overall subscribers by more than [REDACTED], which directly translates to significant adverse financial impacts to GSN — both with respect to subscriber fees paid to GSN by Cablevision and with respect to advertising revenues. As with virtually all non-premier services, these are GSN's two most significant sources of television revenue. Based on our financial models, GSN anticipates it will realize direct licensing and advertising losses amounting to approximately [REDACTED] annually during each year in which Cablevision continues to carry the network on the sports tier. The reduction in revenues dramatically impacts our ability to effectively operate and build our television network.

31. Cablevision's conduct has been particularly harmful because it is a dominant cable operator in the New York market, where a large number of advertising executives are based. These executives often treat a service's availability in their homes as a prerequisite to considering it as a meaningful contender for a share of their advertising budgets. Thus, GSN's loss of approximately [REDACTED] Cablevision subscribers has damaged GSN even more than the harm that it would suffer from the loss of an equal number of subscribers in a different market. Indeed, GSN has already begun to deal with media buyers who are Cablevision subscribers who have inquired about GSN's lack of availability on Cablevision.

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* * *




I declare under penalty of perjury that the foregoing is true and correct. Executed on March 11, 2013.



DAVID GOLDHILL

Exhibit B

Legend to Testimony of Kelly Goode (GSN Exh. 219)

COLOR	Fed. R. Evid.
	402 (Relevance)
	602 (No Personal Knowledge/Foundation)
	802 (Hearsay)

DIRECT TESTIMONY OF KELLY GOODE

GSN Exh. 219

I, Kelly Goode, hereby declare:

I. Background

1. From 2008 to 2011, I was the Senior Vice President of Programming for GSN. As the head of programming, I had oversight for all aspects of original programming, acquisitions, and production for the network and reported directly to David Goldhill, GSN's Chief Executive Officer. Since 2011, I have been an in-house executive producer for GSN with responsibility for developing reality, competition, and digital content for the network.

2. I have over twenty years of experience in the television industry, with particular experience in programming. My career began at Columbia Pictures Television, where, from 1984 to 1986, I was the Manager of Current Programs in the television division. I later moved to CBS as an executive in the comedy development department. At CBS, I was also Vice President, Series Programming, for CBS Productions (1991-1996), where I participated in the development of original programming content, including *Caroline in the City*, *Dave's World*, *Dr. Quinn: Medicine Woman*, and *Touched By An Angel*. I have also served as Head of Television Programming for New Deal Productions (2007-2008), which, at the time, had a production deal with Warner Brothers.

3. For nearly the last fifteen years, my work has principally focused on the development of programming for woman-oriented networks. From 1997 to 1999, I was the Head of Series Development, West Coast for Lifetime Television. From 2000 to 2005, I was Lifetime's Senior Vice President, Series Programming. In these roles, I had oversight of original programming, including development, pilot production, and current programming. While at Lifetime, I was part of the team that launched the network's first original scripted and non-

scripted series, including *Strong Medicine*, *The Division*, *Any Day Now*, and *New Attitudes*. My understanding is that this experience was a key element in GSN's interest in hiring me to lead the network's programming efforts.

II. GSN's Programming Strategy

4. When I joined GSN in 2008, it was made clear to me that all components of the network were to focus on broadening and deepening the network's appeal among women viewers in the 18 to 54 demographic. As soon as I assumed the senior programming position at GSN, Mr. Goldhill informed me that he wanted me to pursue a reinvigoration of the GSN programming lineup: to introduce new, more modern programming that would appeal to women 18 to 54; to introduce new, fresh talent to GSN's programs; to introduce new programming forms to the network; and to bring into the network the programming team necessary to implement this overarching strategy.

5. Based on my experience in programming, I understand that developing a successful catalogue of programming involves a long-term commitment and requires the consideration of a wide portfolio of programming and talent. During my time at GSN, the programming department considered hundreds of ideas for inclusion in the network's lineup and were in constant discussions internally — and with other departments at GSN — about the appropriate programming strategy for drawing a larger audience of women 18 to 54. *See* GSN Exh. 64 [REDACTED]; GSN Exh. 71 [REDACTED]

[REDACTED]; GSN Exh. 147 [REDACTED]
[REDACTED]; GSN Exh. 153 [REDACTED]; GSN Exh.
51 [REDACTED]; GSN Exh. 144 [REDACTED]

[REDACTED]; GSN Exh. 149 [REDACTED]
[REDACTED]. We also considered a wide range of programming talent we thought might be

appealing to our target audience of women ages 18 to 54 and created financial incentives for hosts who successfully drew viewers from that demographic segment. *See* GSN Exh. 54

[REDACTED]; GSN Exh.

79 [REDACTED];

GSN Exh. 81 [REDACTED]; GSN Exh. 92 [REDACTED]

[REDACTED]
[REDACTED].

6. To that end, following my arrival, my team focused on programming specifically focused on building on the network's viewership among women 18 to 54, with a particular emphasis on relationship and lifestyle programming. *See* GSN Exh. 78 [REDACTED]

[REDACTED]

[REDACTED]; GSN Exh. 72 [REDACTED]

[REDACTED]. During my tenure as the head of programming at GSN, the network debuted a slate of original programming thematically focused on these subjects. That portfolio included

Love Triangle, a dating show hosted by Wendy Williams, featuring couples caught in real-life "love triangles"; *The Newlywed Game*, hosted by Sherri Shepherd, a highly-recognizable female host from *The View*, in which newly married couples face off in a series of question rounds; *Baggage*, a relationship show where participants reveal embarrassing secrets, or "baggage," to a potential date; and *Honey Please*, a hidden camera format where couples compete for cash prizes by performing household-related challenges.

7. The network also launched *Carnie Wilson: Unstapled*, a reality program that looked at the [REDACTED] of Carnie Wilson, the former host of *The Newlywed Game*. GSN Exh. 50; *see also* GSN Exh. 40. Like GSN's other

original programming, *Carnie Wilson: Unstapled* sought to reflect many of the issues

[REDACTED]

[REDACTED] See GSN Exh. 43. The network gave especially close attention to the program's performance among the key women 18 to 54 demographic. See GSN Exh. 49 [REDACTED]

[REDACTED]; GSN Exh. 47 [REDACTED].

8. GSN's game show and competition programming also targeted a predominantly female audience. Indeed, in my experience, game show viewership tends to be heavily female, and in my programming role at Lifetime, we looked at the type of competition programming that made up GSN's schedule as part of Lifetime's effort to develop its own game show content. During my time at GSN, the network's programming lineup included a number of competition programs geared toward attracting women viewers, including *Dancing With the*

Stars, which GSN acquired the rights to air; *Deal or No Deal*, a program hosted by Howie Mandel, where participants competed for cash prizes, typically surrounded and cheered on by

their family and friends; *I vs. 100*, hosted by Carrie Ann Inaba, a popular female host from *Dancing With The Stars*; and *American Bible Challenge*, where participants compete for cash prizes that are donated to charity and which we developed because we understood that female audiences drive viewing of faith-based programming.

9. GSN recognized scheduling as a critical component of the potential success of this programming lineup, and GSN's schedule ultimately reflected its renewed focus on the network's original programming. By December 2010, GSN's key Monday-Friday, primetime schedule was occupied by original programming targeting women 18 to 54. See GSN Exh. 94.

III. Programming Overlap With WE tv

10. As a programming executive, it was necessary for me to remain apprised of programming initiatives and strategy at other networks that target the same core audience as GSN. *See, e.g.*, GSN Exh. 145 [REDACTED]

[REDACTED]. I understand that, in recent years, WE tv's schedule focused on content that is thematically similar to GSN's relationship and female-oriented programming. For example, WE tv's recent schedules have included *Bridezillas*, a reality show that follows the lives of engaged women as they prepare for their weddings; *Rich Bride, Poor Bride*, a show that follows engaged couples as they plan their weddings based on a suggested budget; and *I Do Over*, a show that gives couples a second chance at wedding planning.

11. Given the overlap in our target audiences, GSN has also competed directly against WE tv for the same programming and the same talent. For example, in 2011, author John Gray pitched us on an unscripted program titled *Divorce Rehab*. I understand that WE tv received the same pitch from Mr. Gray. As another example, we have on several occasions considered comedian Tammy Pescatelli, a WE tv performer featured on the reality series *A Stand Up Mother*, to host programming on our network. Ms. Pescatelli has auditioned for our executives on a number of occasions. In July 2011, for instance, Ms. Pescatelli came to GSN to pitch a new comedic program in the "roast" format, and we had earlier [REDACTED]

[REDACTED]. *See* GSN Exh. 53

[REDACTED]. In addition, GSN and WE tv were both pitched [REDACTED]

GSN Exh. 72.

* * *


I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 11, 2013.


KELLY GOODE

Exhibit C

Legend to Testimony of Dale Hopkins (GSN Exh. 220)

COLOR	Fed. R. Evid.
	602 (No Personal Knowledge/Foundation)

DIRECT TESTIMONY OF DALE HOPKINS

GSN Exh. 220

I, Dale Hopkins, hereby declare:

A. Background

1. I joined Game Show Network, LLC (“GSN”) in early 2009 as its Chief Marketing Officer. In that role, I oversaw GSN’s marketing and branding strategies directed at female viewers ages 18 to 54. I was hired by Chief Executive Officer David Goldhill to help the network market itself to its existing female viewership and to help attract new female viewers to our programming.

2. I have served as the Executive Vice President of Distribution for GSN since March 2011. I oversee GSN’s distribution strategy, participate in GSN carriage negotiations, and manage the network’s relationships with our affiliate partners.

3. Before joining GSN, I had significant experience working at female-oriented networks. From 1990 to 1999, I was part of the founding team of E! Entertainment Television, a women’s network focused on celebrity and entertainment industry news, gossip, and commentary, first serving as its Vice President of Advertising Sales and later as its Chief Marketing Officer. While at E!, I also helped develop the Style network, featuring women’s-oriented content in the fashion space.

4. I have over 30 years of experience in the television industry. I have worked at a number of television networks, including CBS, the Financial News Network, CNBC, and G4. Immediately prior to joining GSN, I served as interim Chief Executive Officer for Championship Gaming Series, a joint venture between Star Asia, BSkyB, and DIRECTV.

B. GSN's Branding & Marketing Strategy

5. I was approached by Mr. Goldhill to join GSN in 2008. I understood that GSN's viewership had historically been predominantly female because game shows appeal primarily to women. Mr. Goldhill explained to me that he wanted to continue to cater to that female demographic while broadening our content. I was hired to help develop a marketing and branding strategy that would highlight the network's newly-developed female-oriented original programming and that would bring new women viewers to the network. It is my understanding that I was hired in part because of my experience marketing to female viewers and building female brands during my tenure at E! Entertainment Television and the Style Network.

6. As CMO of GSN, I worked to develop marketing plans geared to women in the 25 to 54 and 18 to 49 demographics. In coordination with the head of Programming — at the time, Kelly Goode — we sought to deliberately program for and market to women in those core demographic categories. And my goal was to help increase the network's delivery of viewers in those categories, in part to bolster our advertising sales efforts, which focused on the [REDACTED] [REDACTED] "demo." Indeed, in each core aspect of our business, our primary focus was on retaining and attracting female viewers to the network.¹

7. A network's "brand" differentiates it from its competitors. As such, to develop and update GSN's brand, we needed to frequently monitor and understand our

¹ Until late 2011, GSN aired poker programming, which admittedly did not fit with the remainder of the network's programming and branding efforts. I was not concerned that poker would detract from the network's female-oriented brand because it was programmed as an "island" on weekend nights, where the network's viewership was already lower, in part due to highly-rated female-oriented shows airing on the broadcast networks. We retained poker programming only because it was highly profitable from an advertising sales perspective. This is not uncommon in my experience. When I was at E!, for instance, [REDACTED] [REDACTED]. Airing such programming did not detract from the network's female orientation.

competitive set. GSN's competitive set includes those networks that similarly program and market to women ages 25 to 54 and 18 to 49. Throughout my time at GSN, WE tv has been part of that competitive set.² (*See, e.g.*, GSN Exhs. 11 & 57). While we look at other features of our audience (including, for instance, average income, median age, or geographic composition), those features do not determine which networks are part of our competitive set. Rather, the primary criterion we look at is whether the network caters to female viewers ages 18 to 54 in terms of content, marketing, and advertising sales.

8. As head of marketing, I worked with my department to develop a new brand campaign for GSN entitled "The World Needs More Winners." The campaign focused on real life "winners," highlighting inspirational stories about our viewers and employees. The campaign was initially conceived in 2009, in the midst of a nationwide economic recession, and was designed to showcase uplifting anecdotes and triumphs in the lives of real people. The rebrand highlighted an element of GSN's content that differentiates the network from other female-oriented networks — that is, its focus on competition and winners. But it took the concept of "winning" outside the four corners of a television show, emphasizing true stories about individuals "winning" in life despite a host of challenges. We believed such stories would resonate strongly with our female viewership.

9. My team and I also worked to secure marketing partnerships to promote the network's new original programming. In doing so, we looked for promotional partners that would broaden GSN's exposure and bring in high numbers of female viewers. For instance, we explored partnerships and brand integrations with female-oriented publications like Ladies Home

² Although Wedding Central never matured into a meaningful competitor, we did monitor the network's growth because we believed that, had the network progressed sufficiently, it would have fallen into our competitive set and would have appealed to similar viewers.

Journal, People Magazine, and Redbook, and with cosmetics companies like Maybelline. (GSN Exhs. 23, 30, 38, 61, 62 , 73).

10. In addition, I oversaw GSN's efforts to partner and cross-promote its programming with other networks. In developing "crossovers," we primarily sought out networks that targeted and delivered high numbers of female viewers. Our first priority was reaching an audience similar to ours, *i.e.*, viewers that were likely come over to the network and sample our programming.

11. Not surprisingly, then, on a number of occasions, GSN and WE tv negotiated and in several circumstances developed "crossover" promotions for their programming. For example, three couples from the WE tv show *Bridezillas* appeared on our *Newlywed Game*, and WE tv broadcast promotions for *The Newlywed Game* on its own network. GSN also featured talent and clips from WE tv's *My Fair Wedding* and *Joan Knows Best?* on its interstitial program *GSN Live*, in exchange for on-air promotional inventory on WE tv. In each of these circumstances, the networks' shared media agency, Media Storm, facilitated the negotiations to create advantageous opportunities for each network. (See GSN Exhs. 20, 21, 22, 105, 148).

12. In addition to these completed deals, WE tv approached GSN concerning other possible cross-promotion opportunities to promote WE tv's *Downsized* and *Sunset Daze*.

(See GSN Exhs. 148 & 173). Although GSN declined these proposals due to promotional

schedules for its own shows, the proposals illustrate WE tv's active interest in crossover

promotions with GSN. Indeed, the networks' history of crossovers evidences WE tv's

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understanding of the competitive similarity of the two services and its understanding and belief that the same viewers who watch GSN watch or may be persuaded to watch WE tv.³

C. GSN's Distribution on Other MVPDs and on Cablevision

13. In March 2011, I took over as Executive Vice President of Distribution for GSN, a role previously held by Mr. Dennis Gillespie. In this capacity, I frequently meet with representatives from multichannel video programming distributors ("MVPDs") to discuss carriage of GSN.

14. In pitching GSN to MVPDs, we try to set ourselves apart from our female-oriented competitors to make a compelling case for carriage. We highlight the uniqueness of GSN's content to differentiate ourselves from other networks that appeal to women 18 to 54 — that is, we emphasize the competition-based elements of GSN's programming. This is a competitive positioning strategy to demonstrate to MVPDs that GSN can deliver something unique to their lineup. Indeed, in trying to distinguish ourselves, we emphasize that we provide unique content that other women's networks do not provide to the same extent. This helps us compete with those other networks for the specific purpose of obtaining additional distribution for GSN.⁴

³ GSN has done "barter deals" with other networks that were not as strong of an audience fit as WE tv. However, GSN does not have any sister networks with which it can trade cross-channel promotional spots, nor does it have a corporate parent that will provide it with substantial marketing support. Accordingly, the network is forced to entertain crossover proposals from networks whose audiences may not align as closely with GSN's, to the extent that such proposed deals can help GSN obtain enhanced marketing exposure at minimal cost.

⁴ In other words, this is not a positioning made to consumers to attract viewers, but rather a business-to-business pitch made solely to increase the number of consumers who have access to GSN and who therefore might, through consumer-targeted marketing of different sorts, be enticed to become GSN viewers.

15. GSN also seeks to secure marketing support and favorable packaging and channel placement from its affiliate partners. While GSN is a strong performer nationwide in terms of the ratings it can deliver, it is my experience that the network performs best in markets where it receives support from its distributors. For instance, GSN has been highly successful in urban markets like St. Louis, Detroit, and Philadelphia because the dominant cable providers in those markets support the network with promotional inventory and preferred packaging.⁵

16. From my review of documents relevant to my current position at GSN, I understand that GSN launched on Cablevision systems in 1997 pursuant to an affiliation agreement between Game Show Network, L.P. and Cablevision Systems Corporation. The initial agreement expired in [REDACTED] [REDACTED]. (GSN Exhs. 194, 195, 196). My understanding is that, after the agreement between the parties expired, my predecessor, Mr. Gillespie, sought to engage Cablevision in renewal negotiations but was told that Cablevision would block a renewal on terms consistent with the previous agreement. To this day, Cablevision carries GSN at-will, without a formal contract, and at a rate [REDACTED] [REDACTED] since the contract expired in 2005.

17. In late 2010, after nearly fourteen years of continuous carriage on Cablevision's iO Family tier, reaching approximately [REDACTED] of Cablevision's New York area

⁵ Cablevision has not provided GSN with the same level of marketing support and favorable channel placement that GSN enjoys with other distributors. Nonetheless, GSN has managed to deliver strong ratings in the New York market. *See, e.g.*, GSN Exh. 95 [REDACTED] [REDACTED]; *see also* GSN Exh. 131 [REDACTED]

subscribers, Cablevision announced its plan to reposition GSN to the iO Sports Pak, which in 2011 reached approximately [REDACTED] of its New York subscribers, *see* GSN Exh. 175, and is comprised exclusively of services very dissimilar to GSN — all male-targeted and mostly sports networks. (*See* GSN Exh. 114.)

18. A few months later, I took over as the EVP of Distribution. On March 8, 2011, I spoke with Cablevision's Senior Vice President for Programming Acquisition, Tom Montemagno, as part of GSN's efforts to engage Cablevision in meaningful discussions regarding the restoration of GSN's carriage. Mr. Montemagno called me to formally reject an offer made by GSN and Sony that would have [REDACTED]

[REDACTED] Although this proposal would require GSN to [REDACTED], the harm of being carried on a narrowly-distributed sports tier was too great; GSN had no choice but to [REDACTED] in order to secure broader carriage. On that call, Mr. Montemagno made it clear that Cablevision was [REDACTED]

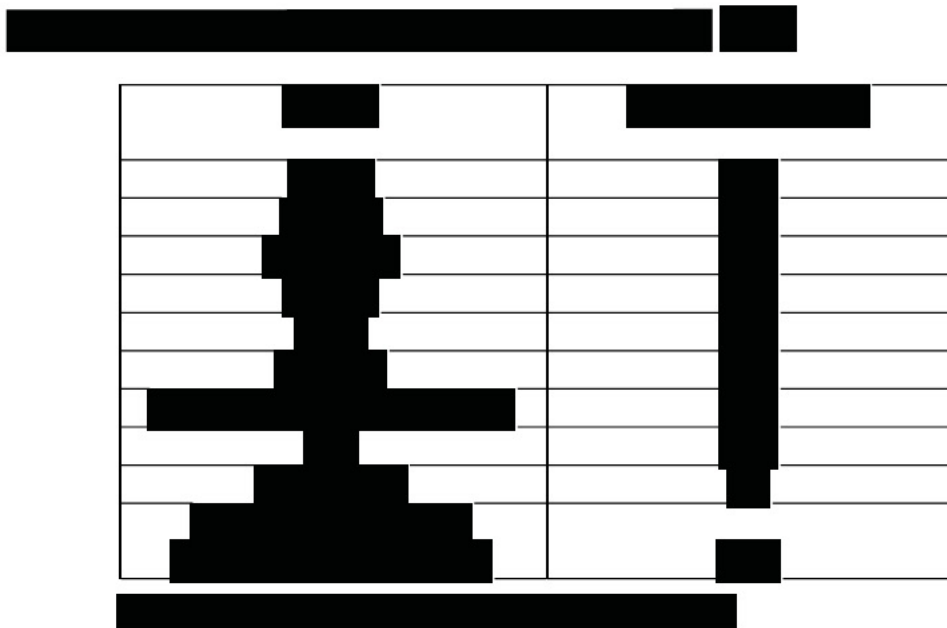
[REDACTED].
(*See* GSN Exh.138).

19. GSN could never accept a [REDACTED] in part because of the [REDACTED]

[REDACTED] — a prospect that would be crippling to a network like GSN that depends heavily on affiliate revenue to survive. The challenges presented by [REDACTED] are commonly-understood in the cable business. Given Mr. Montemagno's years of experience in the industry, he must have known that GSN could not give its service away for [REDACTED] to Cablevision.

Rule
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20. Today, Cablevision is the only distributor that carries GSN on a narrowly-penetrated premium sports tier, even as it carries its affiliated networks on highly-penetrated tiers. Every other major distributor recognizes GSN's value. Indeed, as demonstrated below, after Cablevision tiered GSN, the network's narrow penetration on Cablevision was entirely out of step with the rest of the marketplace, including with its in-market competitors, AT&T, DIRECTV, Dish Network and Verizon FiOS:



21. I understand that Cablevision cited cost concerns in repositioning GSN. It is my experience that virtually every MVPD complains about the rising costs of programming during carriage negotiations. This is a standard negotiation tactic to encourage a network to lower its license fees. Unlike with Cablevision, however, every other major MVPD has recognized that GSN delivers strong ratings at a relatively low cost, and several, including some of the largest, have recently agreed to renew their carriage agreements with GSN and even

⁶ The Cablevision penetration listed includes the company's then-newly-acquired Bresnan systems outside of the New York market. GSN was not tiered in those systems.

expanded the network's distribution.⁷ These other MVPDs face the very same marketplace challenges that Cablevision claims to face. In this context, and stacked up against the behavior of its peers, Cablevision's decision to reposition GSN simply makes no sense, particularly in light of the fact that Cablevision continues to carry its affiliated services on broadly-penetrated tiers although a network like WE tv is at least [REDACTED] in price and similar in audience size to GSN.

22. In my experience, for networks like GSN, it is incredibly harmful when a major distributor refuses to carry your network broadly. It can signal to the industry that the network can be tiered without repercussion, particularly in light of the fact that very few networks are deemed "must-have" programming in today's cable marketplace. As such, I was concerned that the tiering would have a significant impact on other MVPDs' willingness to renew their carriage arrangements with GSN because it is my understanding that distributors frequently look to their peers in making carriage decisions. Indeed, a number of other distributors have asked me about the status of the Cablevision carriage negotiations and have referenced the tiering in demanding lower rates from GSN. Fortunately, despite these challenges, GSN's other distribution partners remain willing to carry the network broadly.

Cablevision continues to be the sole outlier in this regard. Nonetheless, I remain concerned that other distributors may follow Cablevision's lead or threaten to do so in order to extract rate concessions from GSN.

* * *

⁷ Most recently, [REDACTED] each agreed to carry GSN to additional subscribers.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 8, 2013.



DALE HOPKINS

Exhibit D

Legend to Testimony of John Zaccario (GSN Exh. 221)

COLOR	Fed. R. Evid.
	402 (Relevance)
	602 (No Personal Knowledge/Foundation)
	802 (Hearsay)

DIRECT TESTIMONY OF JOHN ZACCARIO

GSN Exh. 221

I, John Zaccario, hereby declare:

I. Background

1. I am the Executive Vice President, Advertising Sales for GSN. In this role, I am responsible for overseeing the advertising sales strategy for the network's cable and on-line business and report directly to David Goldhill, GSN's Chief Executive Officer.

2. I have more than a decade of experience in the media industry, with a particular emphasis on advertising sales. Prior to joining GSN, I was the Vice President, Digital Sales and Marketing for ESPN; Vice President, Customer Marketing for ESPN ABC Sports; a Senior Account Executive for ABC Television, Entertainment and News and Late Night Sales; an Account Executive for Raycom Sports; Director of Sales for Katz Television Group; an Assistant Buyer for the Grey Group; and a Production Assistant for ABC Sports. I joined GSN in 2008 as a Senior Vice President, Advertising Sales and was later promoted to my current position.

II. GSN Advertising Strategy

3. When I arrived at GSN in 2008, I understood that under Mr. Goldhill's direction the network was implementing a multi-prong strategy to build upon GSN's historical success in attracting women to the network and to target more systematically women 18 to 54, including through the introduction of a slate of original programming. It was clear to me that Mr. Goldhill expected GSN's advertising strategy to be consistent with this overarching programming goal. Early in my time at GSN, I was provided with a presentation that laid out

Mr. Goldhill's explicit mandate [REDACTED]

[REDACTED]

Rule 602

[REDACTED] GSN Exh. 8 at GSN_CVC_00078175 & GSN_CVC_00078181.

4. GSN's target demographic for advertising sales is women 25 to 54 and, secondarily, persons 25 to 54. Since I arrived at GSN, the women 25 to 54 demographic has made up the [REDACTED] [REDACTED]. See, e.g., GSN Exh. 65 at GSN_CVC_00056184 & GSN Exh. 174 at 2.

5. In our advertising sales efforts, my team has emphasized GSN's focus on targeting women 25 to 54 and the programming strategy that has developed to drive greater viewership among this core audience. In our upfront presentations, we have consistently highlighted the network's slate of original programming, including *The Newlywed Game*, hosted by Sherri Shepherd, an Emmy Award winning co-host of *The View*; *Baggage*, a dating and relationship program hosted by Jerry Springer; *Love Triangle*, hosted by Wendy Williams, who

Rule 402

was recruited [REDACTED]; *I vs. 100*, an updated version of the quiz show, hosted by Carrie Ann Inaba of *Dancing with the Stars*, who was similarly recruited to drive [REDACTED] See GSN

Rule 402

Exh.142 at GSN_CVC_00138409-10; see also GSN Exh. 141. In trade publications, we have identified our targeted viewers as well as the network's skew toward an audience made up of women. See GSN Exhs 107 at GSN_CVC_00132825 & GSN Exh. 106.

Rule 602
&
Rule 802

6. Based upon my experience and that of my team in discussions with ad buyers, [REDACTED] [REDACTED], GSN's competitive set from an advertising perspective typically includes [REDACTED]

Rule 602
&
Rule 802

[REDACTED]. See GSN Exh. 11 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. My understanding is that these networks focus on programming geared toward a female audience and attract predominantly women viewers.

III. Impact of Repositioning on GSN Advertising Sales

7. Cablevision's repositioning of GSN from the io Family Pak to the iO Sports Pak — and the resulting loss of [REDACTED] in a critical market — materially undermined GSN's ongoing efforts to increase advertising revenues arising from the network's television business.

8. Prior to Cablevision's discriminatory conduct, GSN advertising revenues totaled [REDACTED]

[REDACTED]. In the wake of the Cablevision repositioning, GSN experienced a decline in advertising revenues from [REDACTED] in 2010 to [REDACTED] in 2011. GSN expects that it eventually will realize a loss of [REDACTED]

[REDACTED]. GSN's financial models anticipate that GSN will realize [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

9. Cablevision's conduct has been particularly harmful because it is a dominant cable operator in the New York market. Without question, there is no more important marketplace for advertising purchasing than New York. Most of the major advertising agencies have their principal headquarters in New York City and, importantly, a large number of senior

advertising executives who act as decisionmakers for companies buying advertising time live in Cablevision's footprint in the New York market. These executives often treat a service's

availability in their homes as a prerequisite to considering it as a meaningful contender for a share of their advertising budgets. As a consequence, GSN's loss of approximately [REDACTED] [REDACTED] Cablevision subscribers has damaged GSN even more than the harm that it would suffer from the loss of an equal number of subscribers in a different market.

10. Moreover, the timing of the repositioning was uniquely challenging because it occurred in the midst of a critical transition period for GSN, when the network's programming lineup and branding were undergoing significant changes. All of these changes were made with the goal of increasingly attracting more women 25 to 54 and increasing the network's advertising revenue in this core demographic. These developments in the network's programming line-up were key selling points for advertisers looking to buy against the women 25-54 demographic. The Cablevision repositioning effectively deprived ad buyers in a key market of access to the results of the network's ongoing programming initiatives.

11. For example, during GSN's 2011 upfront presentation to [REDACTED], the lead advertising buyer for [REDACTED], inquired into GSN's absence from Cablevision systems. [REDACTED], which had advertised on GSN prior to 2011, has since purchased on the network only sporadically and, on that occasion, [REDACTED] has made only a small buy on GSN. Similarly, during our presentation to [REDACTED] in 2011, the lead advertising buyer for [REDACTED] expressed concern about the inaccessibility of GSN to Cablevision's basic service subscribers. In both cases, the buyer in charge of the negotiations were GSN fans — and thus promising prospects for advertising sales — but both expressed disappointment that they were not able to access the network.

12. Moreover, the setback in GSN's distribution prompted by the Cablevision retiering has had a substantial impact on GSN's ability to compete successfully for advertising.

The repositioning undercut GSN's ability to achieve the 80 million subscriber threshold that is recognized as a key benchmark for advertisers. Advertisers are particularly interested in a

network's progress in increasing distribution, and the [REDACTED] loss caused by the Cablevision repositioning signaled that progress on that front had slowed. On a number of occasions, it was the subject of focused attention in our upfront presentation discussions with advertisers.

Rule 802
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Rule 602

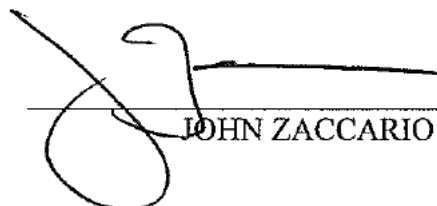
13. Indeed, certain advertisers use a perceived limitation in distribution as a negotiation tactic to insist upon a lower pricing structure. [REDACTED], for example, routinely uses a network's distribution as a leverage point to insist upon greater rate concessions.

Although [REDACTED] had previously been a [REDACTED] advertiser for GSN per year, because [REDACTED] insisted on a lower price due to GSN's contracted distribution, GSN felt it could only reach agreement with [REDACTED] for a [REDACTED] advertising buy for the year. In addition, in 2012, [REDACTED], represented by [REDACTED] gave GSN an ultimatum on price lower than GSN's rate card in the context of a broader discussion about challenges in GSN's distribution growth.

Rule 802
&
Rule 602

* * *

I declare under penalty of perjury that the foregoing is true and correct. Executed on
March 11, 2013.



JOHN ZACCARIO